THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

W.P.No. 25628, 26025 & 26028 of 1999

Dated: 06.07.2007

Between:

W.P.No.25628 of 1999.

Akumalla Chinna Subbaiah and others.

..Petitioners.

And

The Special Deputy Collector and Land Acquisition Officer,
Somasila Project, Unit-IV, Rajampet, Kadapa District.

..Respondent.

W.P.No. 26025 of 1999.

Palle Pedda Yellaiah and others.

..Petitioners.

And

The Special Deputy Collector and Land Acquisition Officer,
Somasila Project, Unit-IV, Rajampet, Cuddapah District.

..Respondent.

W.P.No.26028 of 1999.

Dunnuthala Ramachandra Reddy and others.

..Petitioners.

And

The Special Deputy Collector and Land Acquisition Officer,
Somasila Project, Unit-IV, Rajampet, Cuddapah District.

..Respondent.

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

W.P.No. 25628, 26025 & 26028 of 1999

COMMON ORDER:

As the point involved in all these writ petitions is one and the same, they are disposed of by this common order.

The petitioners filed these writ petitions with the following similar prayer:

> "to issue a writ of mandamus or any other appropriate writ or order or direction holding that the action of the respondent in not re-determining the compensation under Section 28-A of the Land Acquisition Act, as illegal and arbitrary, and further direct the respondent to re-determine the compensation in respect of the lands of the petitioners in Reach-I, Malinenipatnam(v), Atloor Mandal, Cuddapah District on par with that of the lands covered by O.P.Nos. 311 to 313 of 1991 on the file of the Court of the Subordinate Judge, Rayachoty as the lands of the petitioners and the claimants in the said O.Ps were covered by the same Section 4(1) Notification, dated 05.01.1981. "

According to the petitioners, their lands were proposed to be acquired by the Government for the purpose of Somasila Project, for which, a Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') was published on 05.01.1981. The respondent-Land Acquisition Officer passed an award, dated 19.09.1986, but not awarded the market value for the

lands under acquisition. Therefore, some of the land owners, whose lands were acquired for the purpose of the said project, sought references under Section 18 of the Act, within the time provided under the provisions of the Act, and the said references were referred to a Civil Court and were numbered as O.P.Nos. 311, 312 and 313 of 1991. The civil Court, on appraisal of the entire evidence, re-determined and enhanced the compensation to some extent vide award, dated 19.07.1993. The grievance of the petitioners is that though they made an application, dated 16.11.1993, seeking re-determination of the compensation on the basis of the award dated 19.07.1993 passed in O.P.Nos.311 to 313 of 1991, the respondent rejected the same. Hence, the petitioners filed the present writ petitions.

The contention of the learned Government Pleader for Land Acquisition, as per the counter-affidavit, is that the application, dated 16.11.1993, of the petitioners received by the respondent on 22.11.1993 was not supported by any documentary evidence, such as the award of the civil Court passed in O.P.Nos.311 to 313 of 1991, and therefore, the date on which the application received i.e., 22.11.1993 cannot be taken into consideration. He further contends that the petitioners made another application, dated 02.03.1995, seeking re-determination of the compensation under Section 28-A of the Act, by enclosing a copy of the award, and as the said application is beyond the period provided for under Section 28-A of the Act, the respondents have not re-determined the compensation.

Heard the learned counsel for the petitioners and the learned Government Pleader for Land Acquisition.

Evidently, the judgment in O.P.Nos.311 to 313 of 1991 was passed by the civil Court on 19.07.1993, and the date of application given by the petitioners is 16.11.1993. The reason/explanation offered by the petitioners is that they made a copy application on 17.08.1993 and the same was made ready on 24.09.1993, and immediately thereafter, they gave the said application on 16.11.1993. In this regard, it is necessary to extract the proviso to Section 28-A of the Act, which reads as under:

> "Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded."

Hence, the period from 17.08.1993 to 24.09.1993 is to be excluded. When the same is excluded, the application, dated 16.11.1993, which was received by the respondent on 22.11.1993 can definitely be said to be well within the time. Of course, the contention of the learned Government Pleader that the application, dated 16.11.1993, seeking re-determination of compensation, was not accompanied by the copy of the award, dated 19.07.1993 passed in O.P.Nos.311 to 313 of 1991, cannot be countenanced because, this Court has already gave a finding that such an objection of the respondent is not sustainable.

Accordingly, all these Writ Petitions are allowed, and the respondent-Special Deputy Collector-cum-Land Acquisition Officer

is hereby directed to pay compensation to the petitioners on par with other claimants, whose compensation was enhanced in O.P.Nos.311 to 313 of 1991. There shall be no order as to costs.

GOPALAKRISHNA TAMADA, J

Dated:06.07.2007

sj